

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CARL FULSOM GLENN,
Defendant-Movant,

§
§
§

v.
UNITED STATES OF AMERICA,
Plaintiff-Respondent.

§ No. 3:01-CR-0386-G
§(No. 3:05-CV-0235-G)
§
§

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the Court in implementation thereof, the subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge, as evidenced by his signature thereto, are as follows:

FINDINGS AND CONCLUSIONS:

Type Case: This is a motion to set aside, vacate or correct sentence filed pursuant to 28 U.S.C. § 2255.

Parties: Carl Fulsom Glenn (“Glenn” or “Movant”) is a federal prisoner currently confined at FCI Seagoville in Seagoville, Texas. Respondent is the United States of America.

Statement of the Case: Glenn plead guilty to Conspiracy to Defraud Using an Unauthorized Access Device and Aiding and Abetting and Felon in Possession of a Firearm on May 14, 2002. He was sentenced on July 31, 2002¹ to 51 months in the penitentiary on each offense, to be served concurrently. Movant did not appeal his conviction.

Glenn filed the instant habeas petition on February 1, 2005. The United States filed a

¹His judgment was later amended on August 22, 2002 to reflect a change in the amount of restitution due the victim as a result of a clerical mistake.

response on April 11, 2005 addressing the merits of Movant's complaint. Glenn filed a reply on April 26, 2005.

Findings and Conclusions: In his sole ground for relief, Movant contends that his sentence violates *United States v. Booker*, __ U.S. ___, 125 S.Ct. 738 (2005). However, "Booker applies retroactively only to cases that 'are not yet final.'" *Rosales v. United States*, 2005 WL 840122 (N.D. Tex. Apr. 11, 2005)(Fish, C.J.), citing *Booker*, __ U.S. at __, 125 S.Ct. at 769; *see also McReynolds v. United States*, 397 F.3d 479, 481 (7th Cir. 2005), *Green v. United States*, 397 F.3d 101, 103 (2nd Cir. 2005), *In re Anderson*, 396 F.3d 1336, 1339 (11th Cir. 2005). Therefore Movant's claim should be denied.

RECOMMENDATION:

Movant has failed to show that he is entitled to relief pursuant to 28 U.S.C. § 2255. It is therefore recommended that the petition be denied and dismissed.

A copy of this recommendation shall be transmitted to Movant and to counsel for Respondent.

SIGNED this 24th day of June, 2005.



Wm. F. Sanderson Jr.
United States Magistrate Judge

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten (10) days after being served with a copy of this recommendation. Pursuant to *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten (10) day period may bar a *de novo* determination by the district judge of any finding of fact and conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjection to proposed findings of fact and conclusions of law accepted by the district court.